

two of the partners who secured the letter -- Joseph Mims, who estimated the costs and went to the bank to obtain the letter, and Kent Foster, who also had gone to the bank to request the letter and personally guaranteed the loan -- that the bank would provide reasonable assurance of a loan for \$350,000. In fact, the bank did provide the letter and the record demonstrates that the bank intended to give reasonable assurance. The East Texas State Bank letter does state that the bank will "consider" the loan as Skywave and Texas, Ltd. argue but it also provides that it is the bank's "intention and desire" to make the loan on the terms provided in the letter.

53. The bank's board chairman, Raymond Crouch, met with Mr. Mims and Mr. Foster before the letter was issued. At that meeting, Mr. Mims provided an analysis of the proposal which included its cost and the likelihood that it would be financially viable; Mr. Crouch reviewed a financial statement and credit report on Mr. Foster, who was going to guarantee the loan, a financial statement from Amelie Cobb and her spouse, and considered the fact that Mr. Mims was an experienced broadcaster. He then discussed the request with the bank's board of directors and the bank's lawyer before the letter was issued. These facts do not show that the bank was merely accommodating Mr. Foster, who voted 82% of the bank's stock, or that the bank was insincere when it claimed that it intended and wanted to make the loan. The bank's intentions were made known before the partners met to finalize their plans and it was done before Ms. Hatcher certified. The letter from the East Texas State Bank will be credited.

54. Ms. Hatcher also needed to rely on Mr. Foster's promise to lend \$150,000, since \$350,000 will not be enough to build and operate the station. There is no claim made that she or anyone else in the partnership undertook the necessary analysis of Mr. Foster's liquid assets and short term and long term liabilities. She did rely on impressions that various people had about Mr. Foster's wealth but those impressions were not based on any specific knowledge of Mr. Foster's balance sheet. While she did talk with Mr. Foster about his investments and assets, that discussion was very general.

55. Nevertheless, it appears that her belief about his ability to provide money was warranted. Mr. Foster's July 1987 balance sheet shows liabilities of \$301,184 in a note payable to the East Texas State Bank and, in addition, at the time Ms. Hatcher certified, Mr. Foster was obligated to provide \$1 million for other broadcast proposals. CHM Financial Exh. 4E. Mr. Foster had liquid assets of about \$550,000. He also had assets which were not liquid, which, if he sold them within 30 days, would be worth \$1,225,000. Thus, without considering Mr. Foster's obligation to CHM, he had existing obligations of \$1,300,000 and liquid assets of \$550,000. If his promise to liquidate \$1,225,000 in real estate was possible on short notice, he would have had enough to meet all his obligations. The appraisal of the land relied on by Mr. Foster discounts its value because it is to be sold within 30 days; it is the discounted amount on which Mr. Foster relies. As CHM points out, that is sufficient to show the money can be raised. *Citing, International Broadcasting Co., 3 F.C.C.2d 449, 451 (1966).*

56. The Commission, in *Susan S. Mulkey*, 4 FCC Rcd 5520, 5522 (1989) explained that "uncorroborated oral assurances are not sufficient to resolve all questions concerning the validity of the financial certification." The

person proposing to lend the funds must show that he had the necessary financial resources at the time. *Id.* There must be a balance sheet or other documentary evidence demonstrating sufficient net liquid assets to meet his financial commitment. *Id.*, quoting, *Northampton Media Associates*, 4 FCC Rcd 5517, 5519 (1989). When Ms. Hatcher certified, she did not have any documentary proof on which to base her decision. While Mr. Foster has significant assets, he did not have sufficient liquid assets to meet all of his obligations in each of the Commission proceedings he was already obligated to do so and he never presented a plan to Ms. Hatcher about how he intended to meet his obligation. CHM partners urge that Mr. Foster made an oral promise to meet all the applicant's financial needs. But Mr. Foster's written promise in the Memorandum of Agreement was not that expansive; he agreed to provide only \$150,000. The partnership was to be capitalized at \$25,000 and the partnership, when officially organized, was to reflect terms and conditions set forth in a Memorandum of Agreement, which was prepared in June 1987.

57. In November 1988, the East Texas State Bank was insolvent and its business was assumed by the First Bank of Buna. While CHM states that it assumed that the bank letter from East Texas State Bank would be honored by the First Bank of Buna, none of the partners did anything to determine whether it would. Marshall Duff, Chief Executive Officer of the First Bank of Buna, stated in a sworn affidavit when this issue was designated that "the First Bank of Buna, N.A., did not assume any unfunded commitments, letters or lines of credit." Furthermore, he said that the First Bank of Buna "would not be interested in extending any commitment, letter or line of credit to Kent [Foster] or to any business entity with which he was affiliated." Motion to Supplement Petition to Enlarge Issues, filed July 5, 1989 by Beaumont Skywave, Inc., Affidavit, at 2. After CHM knew that the East Texas State Bank was insolvent, it was incumbent on CHM to show that it had reasonable assurance for financing its proposal. It did not document that it was financially qualified after the bank failed.

58. Mr. Foster, in November 1988, owned about \$1.5 million in liquid assets. CHM Financial Exh. 4C. He also had liabilities of \$630,000 listed on his balance sheet and had promised to provide \$1.5 million to communications proposals. *Id.* Again, assuming Mr. Foster could liquidate his real estate on short notice, he could meet his obligations. Mr. Foster, in March 1989, obtained a bank letter from the National Bank of Washington for \$350,000. In March 1989, Mr. Foster's liquid assets were about the same as in November 1988 and the liabilities listed on his balance sheet were \$840,000. CHM Financial Exh. 4D. He also was obligated to provide \$3.1 million to broadcast applications. Mr. Foster claims he could liquidate his real estate within 30 days to meet his obligations of over \$4 million. The Texas real estate is estimated to be worth \$1,225,000 within 30 days. Mr. Foster also lists property in the Grand Cayman Islands, British West Indies that appraisers claim is worth about \$5.5 million at a forced sale. CHM Financial Exh. 5, at 3. There is a claim of approximately \$2 million against the properties. *Id.* It appears that Mr. Foster has available sufficient funds to provide the money he has promised to CHM. He could realize in cash about \$1.5 million and

from real estate \$6.7 million, which makes available \$8.2 million. His liabilities are substantially less than \$8 million.

59. On January 22, 1990, Skywave petitioned to reopen the record because Mr. Foster now has additional financial obligations of \$350,000. Section 1.65 requires that CHM inform the Commission whenever there is a change in the accuracy and completeness of information furnished in a Commission proceeding. CHM failed to make the required report. Nevertheless, the addition of \$350,000 in obligations does not make CHM's reliance on Mr. Foster unreasonable.² There is no question that CHM is financially qualified.

60. The question of CHM's credibility on this issue is a close one. It appears that the general partners' impressions of Mr. Foster's ability to finance the applicant was accurate even if not documented. Nevertheless, although Ms. Hatcher certified the financial condition of the applicant, she knew very little about whether CHM would be able to finance its proposal. She never asked specific questions about Mr. Foster's assets and liabilities and she never documented the applicant's ability to finance the proposal. At the same time, Ms. Hatcher testified that she knew the Commission's requirements and she had available experienced counsel. Moreover, Mr. Foster and Mr. Mims, who undertook establishment of the applicant's financial qualifications, were aware of the Commission's requirements. Mr. Foster is a veteran of Commission proceedings and Mr. Mims earns his living explaining to potential applicants how to obtain grants from the Commission. All of this argues against the Commission's being able to rely on CHM's representations. If there were other instances where CHM was unreliable, it would be disqualified. However, because CHM's certification was based partly on a valid bank letter and a timely analysis of the cost of the facility, it is evident that CHM attempted to comply in part. For this reason CHM will not be disqualified.

Issue 3: Determination of which proposal would best serve the public interest

61. CHM and Skywave are the only two applicants that are qualified and entitled to comparison. Both applicants claim that all of their controlling owners will manage the station on a full-time basis and will determine the policy governing the applicant. Skywave is a corporation with one voting stockholder, Alice Felix Ramsey. Ms. Ramsey owns 25% of Skywave's equity and Skywave Communications Corporation owns the remaining 75%. Ms. Ramsey represents that she will be the general manager of the station and that she will work full time, 40 hours per week. Ms. Ramsey is also a corporate director and holds the offices of president, secretary, and treasurer of Skywave.

62. If the past is prelude to the future, however, it is apparent that Ms. Ramsey will not exercise complete control over Skywave and its communications business. Skywave Communications Corporation (SCC) initiated the proposal. Leon Perkinson, the president, director, and single largest shareholder in SCC approached Ms. Ramsey about managing the station. The record reflects that SCC initiated Skywave's proposal before Ms. Ramsey became a participant. SCC selected the legal and engineering assistance for the applicant, arranged for financing, and deter-

mined the nature of the governing documents. In all important respects, SCC organized the applicant and determined Skywave's proposal for the license.

63. While Ms. Ramsey assisted in arranging for an antenna site, the actual location and details of securing the site were undertaken by her spouse, Daniel Ramsey. Mr. Ramsey is vice president, assistant secretary and treasurer and a director of Skywave. The corporate records reflect that Mr. Ramsey has participated in the decisions that have been made for the corporation in his role as a director. He has also exercised authority as an officer when Ms. Ramsey was unable to do so.

64. Two of the stockholders of SCC, in addition to Mr. Perkinson, have provided services to Skywave. Phillip Kappes, who is the third or fourth largest stockholder of SCC, has been Skywave's corporate lawyer and provided its corporate documents. Douglas McFadden, who is also a stockholder of SCC, has provided legal services for Skywave through his law firm, McFadden, Evans & Sill. Mr. McFadden's firm completed the application for the applicant and has represented it before the Commission. In addition, on May 1, 1993, SCC has the right to require Skywave to purchase its preferred stock or issue voting stock to SCC in proportion to its equity. SCC made this provision to protect its investment. In order to further protect its investment, SCC's Leon Perkinson wrote to Ms. Ramsey and told her what facts she would need to know in order to appear at the hearing and answer discovery requests. Ms. Ramsey's answers to interrogatories attempted to convey her participation but, when her claims were examined in detail, it turned out she represented a role substantially greater than she had. For example, Ms. Ramsey claimed that she paid all bills and signed all checks. Actually, her spouse and Mr. Perkinson also paid bills and her spouse signed checks. As is evident, Skywave is not a corporation where the nonvoting preferred shareholders have been passive. In fact, it is the voting stockholder who has stood by while SCC made all significant decisions. These facts rebut Skywave's claim that SCC is passive.

65. CHM argues that Ms. Ramsey should be denied any credit because of her largely passive role in creating the applicant and preparing the proposal. That might be the case if only Skywave's past performance were analyzed but Ms. Ramsey has some broadcast experience and she lives in the community. It is not implausible that she will be active at the station, although it is apparent that she will not act independently of SCC or her spouse, both of whom she regularly has relied on. In some respect, it is to be expected that the entity putting up the money would initiate the proposal. As CHM points out, SCC has frequently applied for station licenses and is experienced in initiating broadcast license applications. Some of its owners earn their living providing legal advice to applicants. If it were assumed that Ms. Ramsey's equity share of 25% represents her control (which would be the maximum amount that could be credited), Skywave will not prevail against CHM.

66. CHM is a limited partnership with four partners. Three of the partners, Amelie Cobb, Joseph Mims, and Beverly Hatcher, each have a 15% equity interest. They have been designated general partners and have promised to manage the station on a full-time, 40 hours per week, basis. There is one limited partner, Kent Foster, who owns 55% of CHM's equity. The limited partner in CHM, like the nonvoting stockholder SCC in Skywave, also

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initiated the proposal. The law firm that represents CHM and the engineering firm that prepared the engineering were selected by Mr. Foster. Mr. Foster has been in charge of providing the applicant's financing and directly or indirectly he determined who the general partners would be. He approached the spouse of a friend, Amelie Cobb, and she in turn identified the other two partners.

67. The financial issue which considered whether CHM is financially qualified best illustrates Mr. Foster's control. Beverly Hatcher certified to the Commission that the applicant was financially qualified. But the record reflects that she did what she was told; she made no independent determination of the applicant's financial plan. In fact, when Mr. Foster, in general terms, told the three other partners how wealthy he was, not a single general partner asked him to document his claims. They did not require him to justify his representations, even though they knew they should have. Mr. Mims was fully aware of the Commission's financial requirements and Ms. Hatcher was also. There is no evidence that the general partners have ever exercised any authority or control over Mr. Foster; they have taken his word at face value when it was not in their interest to do so and when they had no specific information to justify such faith. (Of course, CHM could have avoided the whole financial question if Mr. Foster had certified the application since he presumably knew his own net worth.)

68. None of the general partners have ever applied for a Commission license before but Mr. Foster has routinely been an applicant. While the record does not indicate that Mims, Cobb and Hatcher will not work at the station, it is likely that Mr. Foster will exercise some control over his investment. Because CHM proposes that 45% of its owners will manage, it is to be preferred over Skywave. The gap between CHM and Skywave's quantitative proposals is greater than 12.5% and, therefore, comparison of the applicant's qualitative proposals need not be made. *Miracle Strip Communications, Inc.*, 4 FCC Rcd 5064, 5066 (1989).

69. Neither Skywave nor CHM have existing media interests or associations. Because CHM is to be preferred for its quantitative integration of management and ownership, it will receive the grant.

ACCORDINGLY, IT IS ORDERED that the petition for leave to amend, filed August 24, 1989 by CHM Broadcasting Limited Partnership IS GRANTED and the amendment IS ACCEPTED.

IT IS FURTHER ORDERED that the motion of CHM Broadcasting for leave to supply omitted material and to correct error, filed September 11, 1989 IS GRANTED.

IT IS FURTHER ORDERED that the motion to reopen record, filed October 2, 1989 and petition to reopen the record and receive evidence, filed January 22, 1990 by Beaumont Skywave, Inc. ARE DENIED.

IT IS FURTHER ORDERED that the motion for leave to accept proposed findings and conclusions of CHM Nunc Pro Tunc, filed October 23, 1989 by CHM Broadcasting IS GRANTED.

IT IS FURTHER ORDERED that the motion for leave to amend, filed November 9, 1989 by CHM Broadcasting Limited Partnership IS GRANTED and the amendment IS ACCEPTED.

IT IS FURTHER ORDERED that the applications of Texas Communications Limited Partnership (File No. BPH-870710MJ) and Beaumont Skywave, Inc. (File No.

BPH-870710NA) ARE DENIED and the application of CHM Broadcasting (File No. BPH-870710NC) for a construction permit for a new FM station on Channel 273C2 in Beaumont, Texas IS GRANTED subject to the following condition:

Upon receipt or notification from the Commission that harmful interference is being caused by the operation of the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate corrective action as is necessary to eliminate the harmful interference. This condition expires after one year of interference-free operation.³

FEDERAL COMMUNICATIONS COMMISSION

Edward J. Kuhlmann
Administrative Law Judge

FOOTNOTES

¹ Amelie Cobb at one point said she believed the applicant would need only \$350,000 but she offered no documentation that that was her view at the time of certification nor did she explain how she arrived at that amount. In light of the letter from the East Texas State Bank for that amount, it appears to be only a post hoc rationalization.

² Skywave has independently argued that Mr. Foster is unreliable and cannot be counted on to finance his obligation to CHM, no matter what his personal net worth is. There is some evidence that Mr. Foster has sought licenses and then either failed to follow through until the end of the proceeding or that he obtained licenses in lotteries and decided to sell them rather than provide the service applied for. That behavior does not mean he cannot be relied on here. He has signed two documents which obligate him to provide funds and, although undocumented, he claims that he has paid nearly \$200,000 to establish CHM's proposal. While the record does not establish what he has paid, it does confirm that he has a legal obligation to provide funds.

³ In the event exceptions are not filed within 30 days after the release of this Initial Decision, and the Commission does not review the case on its own motion, this Initial Decision shall become effective 50 days after its public release pursuant to Section 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

KENT S. FOSTER File No. 10414-CL-P-666-A-89

For facilities in the
Domestic Public Cellular
Telecommunications Radio
Service on Frequency Block A, in
Market 666, Texas 15 - Concho

FAIR OAKS File No. 10960-CL-P-549-A-89
CELLULAR
PARTNERSHIP

For facilities in the
Domestic Public Cellular
Telecommunications Radio
Service on Frequency Block A, in
Market 549, New Hampshire 2 - Carroll

PROGRESSIVE File No. 10008-CL-P-317-A-88
CELLULAR III B-2

For facilities in the
Domestic Public Cellular
Telecommunications Radio
Service on Frequency Block A,
in Market 317, Alaska 3 - Haines

PACIFIC File No. 10310-CL-P-402-A-88
NATIONAL CELLULAR

For facilities in the
Domestic Public Cellular
Telecommunications Radio
Service on Frequency Block A, in
Market 402, Illinois 9 - Clay

WESTERN
CALIFORNIA
CELLULAR PARTNERS

File No. 10184-CL-P-709-A-88

For facilities in the
Domestic Public Cellular
Telecommunications Radio
Service on Frequency Block A, in
Market 709, Wisconsin 2 - Bayfield

TEN - TEN File No. 10616-CL-P-361-A-89
GENERAL
PARTNERSHIP

For facilities in the
Domestic Public Cellular
Telecommunications Radio
Service on Frequency Block A, in
Market 361, Florida 2 - Glades

MEMORANDUM OPINION AND ORDER

Adopted: November 30, 1992; Released: December 8, 1992

By the Commission:

I. INTRODUCTION

1. Petitions for reconsideration have been filed regarding two Commission decisions which dismissed or affirmed dismissal of the captioned applications for non-wireline Rural Service Area (RSA) cellular authorizations.¹ The applications were dismissed for failure to include information demonstrating the firm financial commitment required by Section 22.917(c)(5) of the Commission's rules. Petitioners argue that Section 22.917(c)(5) is unenforceable because it was not adopted in accordance with the requirements of the Paperwork Reduction Act of 1980 (PRA).² For the reasons discussed below, we grant the petitions, to the extent indicated herein, and reinstate the captioned applications.³

II. DISCUSSION

2. Petitioners argue that the Commission failed to comply with the Paperwork Reduction Act (PRA) in adopting Section 22.917(c)(5). They note that under Section 3507(a) of Title 44, United States Code, any new or revised information collection requirement must be approved by the Office of Management and Budget (OMB), and that no

¹ See *Applications for Review and Petitions for Reconsideration of the Return of Rural Service Area Cellular Applications for Having Defective Maps*, 6 FCC Rcd 5378 (1991) (affirming dismissal of the application filed by Western California Cellular Partners (Western)); *Butte Cellular Group*, 6 FCC Rcd 6745 (1991) (dismissing the application of Fair Oaks Cellular Partners (Fair Oaks) and affirming dismissal of the applications filed by Kent S. Foster (Foster), Pacific National Cellular (Pacific), Progressive Cellular III B-2 (Progressive), and Ten-Ten General Partnership (Ten-Ten)). Oppositions were filed in response to

the petitions for reconsideration of Fair Oaks, Western, and Progressive, and reply pleadings were filed. The petitions of Foster, Pacific, and Ten-Ten are unopposed.

² 44 U.S.C. §§ 3501-3520.

³ By a letter dated October 21, 1992, Pacific asked that a decision in its case be issued by separate order. We find that Pacific has failed to provide sufficient reason to justify its request, and that issuing a separate order would constitute an inefficient use of Commission resources. Accordingly, Pacific's request is denied.

penalty, such as dismissal, may be imposed for failure to comply with a non-compliant requirement. See 44 U.S.C. § 3512.⁴ Petitioners concede that the Commission obtained OMB approval for the proposed version of Section 22.917(c),⁵ but argue that the Commission made substantive and material changes in the final version of the rule without obtaining additional OMB approval.⁶ Petitioners state that, under these circumstances, the Commission may not dismiss their applications for failure to comply with Section 22.917(c)(5).⁷

3. The opposing parties argue that Section 22.917(c)(5) was not substantively or materially changed after approval by OMB. Alternatively, they contend that even if some substantive changes were made, the Commission still has authority to enforce any specific provisions of Section 22.917(c)(5) which were not substantively changed, and can uphold dismissal of Petitioners' applications for failure to comply with such provisions.

4. We find that Petitioners' argument is correct. The final version of Section 22.917(c)(5) consists of an introductory portion specifying the types of institutions that may provide financing, see Section 22.917(c)(5), and five statements that the lender must include in its commitment letter. See Section 22.917(c)(5)(i)-(v). In comparing the proposed and final versions of Section 22.917(c)(5), we conclude that the introductory portion contains substantive modifications, and three of the five statements involve completely new requirements. See Sections 22.917(c)(5)(ii), (iv), and (v). The remaining two statements also have been modified. See Section 22.917(c)(5)(i) and (iii). The opposing parties have suggested that, if an applicant violated any provision of Section 22.917(c)(5) that was not substantively modified, that portion of the rule can be enforced, and dismissal of the application upheld. However, we conclude that Section 22.917(c)(5) has been so substantively and materially modified as to render the rule, as a whole, unenforceable under the PRA because of our failure to comply with PRA requirements in adopting the rule.⁸ Accordingly, we find that Petitioners' applications should be reinstated and returned to pending status.⁹ The applications will be processed consistent with our decision herein.¹⁰

⁴ Section 3512 states that "[n]otwithstanding any other provision of law, no person shall be subject to any penalty for failing to maintain or provide information to any agency if the information collection request involved . . . does not display a current control number assigned by the Director [of OMB], or fails to state that such request is not subject to this chapter."

⁵ See Third Notice of Proposed Rule Making, Amendment of the Commission's Rules for Rural Cellular Service, CC Docket No. 85-388, 3 FCC Rcd 2591 (1988).

⁶ See 5 C.F.R. § 1320.13(g) (final rule submitted to OMB only if substantively or materially modified after approval as proposed rule); 5 C.F.R. § 1320.11(h) (substantive or material changes must be approved by OMB).

⁷ Petitioners also argue that they had, in any event, complied with Section 22.917(c)(5). We need not address this argument here.

⁸ Cf. *Dana Communications, Ltd.*, 7 FCC Rcd 1878 (1992) (final version of Section 22.917(c)(6) of the Commission's rules held unenforceable because not approved by OMB). In *Asset Management Corporation*, 6 FCC Rcd 6538 (Mobile Serv. Div. 1991), the Mobile Services Division stated, in dicta, that the final version of Section 22.917(c)(5) was not substantively or materially dif-

III. ORDERING PARAGRAPHS

5. Accordingly, IT IS ORDERED THAT the applications filed by Kent S. Foster, File No. 10414-CL-P-666-A-89, Fair Oaks Cellular Partnership, File No. 10960-CL-P-549-A-89, Progressive Cellular III B-2, File No. 10008-CL-P-317-A-88, Pacific National Cellular, File No. 10310-CL-P-402-A-88, Western California Cellular Partners, File No. 10184-CL-P-709-A-88, and Ten-Ten General Partnership, File No. 10616-CL-P-361-A-89, ARE REINSTATED.

6. IT IS FURTHER ORDERED THAT the Petitions for Reconsideration filed by Kent S. Foster, Fair Oaks Cellular Partnership, Progressive Cellular III B-2, Pacific National Cellular, Western California Cellular Partners, and Ten-Ten General Partnership ARE GRANTED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

ferent from the proposed version of the rule. That statement in dicta is inconsistent with our decision here, and is therefore overruled.

⁹ New lotteries have been held for two of the involved RSAs, the Wisconsin 2 - Bayfield RSA (Bayfield RSA) and the Alaska 3 - Haines RSA (Haines RSA). As a result of these lotteries, Mtel Cellular, Inc. (Mtel) was named the new tentative selectee for the Bayfield RSA, see Public Notice Report No. CL-90-308, released September 21, 1990, and RJL Cellular Partnership (RJL) was issued a construction permit for the Haines RSA. See Public Notice Report No. CL-91-79, released February 1, 1991. However, these actions were conditioned on the outcome of the current proceeding. See Lottery Notice No. 3497, released June 8, 1990; Public Notice Report No. CL-91-79.

¹⁰ As part of this processing, the Commission will examine the applications to ensure that the applicants are financially qualified. See Section 308(b) of the Communications Act of 1934, 47 U.S.C. § 308(b). We may request supplemental financial showings if necessary. See 5 C.F.R. § 1320.5(b) (in case of an unapproved information collection requirement, agency shall permit respondents to satisfy the legal condition in any reasonable manner).

EXHIBIT C

01/20/93
EX-IV

JANUARY 20, 1993

PRELIMINARY AGREEMENT BY AND BETWEEN

Ladas Broadcasting Company
Harry Ladas, President
101 West Napoleon
Sulphur, LA 70663

B & C Broadcasting, Inc.
John A. Henning
Secretary/Treasurer
P.O. Box 3104
Lake Charles, LA 70602

FOR THE PURPOSES OF: Outlining the basic terms and conditions for Ladas Broadcasting Company ("Ladas") to enter into a Local Management Agreement ("LMA") with B & C Broadcasting, Inc. ("B&C") to commence on the completion of the construction of the facility by B&C which meets the specifications outlined in the construction Permit to B&C by the Federal Communications Commission ("FCC") and the granting of the broadcast license to B&C following Program Testing, after construction is completed.

FURTHER: To outline the basic terms and conditions for Ladas to enter into an "OPTION TO PURCHASE" the C-2 FM Station from B&C Broadcasting, which will allow Ladas to purchase the station following the completion of the LMA agreement between Ladas and B&C.

PROVISIONS REGARDING THE LMA AGREEMENT;

1. ~~LMA will be for a period of 24 months, beginning when station construction and program testing is completed, and FCC issues license for commercial broadcasting.~~
2. LMA fee will be \$6,000 per month, beginning 30 days after commercial broadcasting is begun.
3. B&C will buy and construct only the transmitter site items, such as the tower, FM transmitter and processing equipment, plus FM and STL antenna's and feed lines, suitably housed in a building at the base of the tower on land it has leased.
4. B&C Broadcasting will not need to purchase any studio equipment, as Ladas Broadcasting will utilize it's studio equipment and facilities at it's current studios for KEZM-AM.

5. B&C Broadcasting will pay for all of the maintenance and upkeep on its tower/transmitter site, including, but not limited to the monthly power bill, and repairs, as may be necessary, including the cost of the tower site lease. Each month the total cost of the above, which will be reasonable, will be paid for by B&C Broadcasting, and upon submission to Ladas of receipts for payment made, Ladas will reimburse B&C a like amount.
6. B&C's construction of the transmitter site for the C-2 construction permit must meet FCC requirements for the CP.
7. The LMA agreement between Ladas and B&C will contain all of the usual and standard provisions found in LMA agreements including, but not limited to provisions which protect and preserve rights of B&C to reject unwanted programming, and to always maintain control of the B&C License.
8. Ladas will provide, at no charge, an office in its main studios for the Manager of B&C, who will have access to, and will oversee the interests of B&C Broadcasting.
9. Ladas will provide substantially all of the programming for B&C, and will also provide public interest programs such as music, news, weather, sports, promotional material, commercial and advertising. It is expressly understood and agreed between the parties that this provision shall not preempt or limit B&C's right to reject any programming it deems unacceptable or inconsistent with its public interest obligations as a licensee of the FCC.
10. Ladas shall have the right to promote and sell advertising and commercial time, and shall be authorized to collect, hold, and apply all revenues derived from these sales for its business purposes. Ladas shall determine the advertising rates, frequency and advertising schedules.

PROVISIONS FOR THE "OPTION TO PURCHASE"

1. ~~Option Price will be \$350,000 on terms shown below.~~
2. Option to purchase must be exercised 30 days prior to the end of the 24 month LMA agreement.
3. Ladas Broadcasting will be given credit for \$2,000 per month paid on the LMA agreement toward the purchase price, i.e., 24 months x \$2,000 or a \$48,000 credit, making the net option price to be \$302,000.

4. Ladas Broadcasting agrees, when it exercises its option to purchase and upon FCC approval to purchase KZWA Frequency 105.3 channel 287 from B&C, to pay B&C One Hundred Two Thousand Dollars (\$102,000) at closing plus the book value of the transmitter, equipment and related assets on the basis of the ~~three~~ ^{JAH} remaining years of an ACRS depreciation schedule plus equipment installation ^{to be} expenses on the same depreciated basis as the equipment. In addition, Ladas will ^{Account} pay a remaining balance of Two Hundred Thousand Dollars (\$200,000) in four (4) equal annual installments of Fifty Thousand Dollars (\$50,000) each plus annual accrued interest at five (5) percent, the first payment due twelve (12) months following closing.
5. In addition Ladas agrees to enter into a no-compete agreement with John Henning, which will be for a period of 4 years. Amount paid will be \$300.00 per month in exchange for Henning to agree to not compete in AM/FM radio station ownership within 50 miles of Lake Charles, for a 4 year period. The payments to Henning will commence 30 days following the closing of the purchase of B&C FM Station by Ladas Broadcasting.
6. Ladas Broadcasting and Harry Ladas agree that upon the closing of the purchase of the station, following the exercising of the option to buy, Ladas will guarantee the remaining term of the B&C original 10 year lease, under the same terms and conditions, at \$1200 per year.
7. The terms above are subject to B&C shareholders and Federal Communications Commission Approval.

AGREED TO THIS 20th DAY OF JANUARY, 1993.

B&C BROADCASTING, INC.

BY: 

John Henning, Secretary/Treasurer

LADAS BROADCASTING COMPANY

BY: 

Harry Ladas, President

For Sunbelt Media, acknowledging receipt of the \$12,000 first and last month lease payments, to be paid to B&C on commencement of the LMA period.

W. N. Cate

W.N. CATE, PRESIDENT

ADDITIONAL SIGNERS FOR B & C BROADCASTING, INC.

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